IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 3376 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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P N VAIDYA - Applicant
Versus
ANILKUMAR R DALIA DIRECTOR OF SHRIRAM PAPER MILL & 1 - Respondents

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Appearance :
MR ND GOHIL for Applicant : 1,
RULE UNSERVED for Respondent : 1,
MR MA PATEL ADDL PUBLIC PROSECUTOR for Respondent : 2,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 12/01/2007

ORAL JUDGMENT

1. The Assistant Law Officer, Gujarat Pollution Control Board, Surat has preferred this

Application under Section 378(4) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code' for short) seeking special leave to file an appeal challenging the order of acquittal dated 30.3.2002 passed by the learned JMFC, Kathor, Surat in Criminal Case No. 343 of 1990, whereby, the respondent was acquitted of the charges of commission of offence punishable under Sections 43, 44 and 49 of The Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as 'the Act' for short).

2. This Court (Coram: D.N.Patel, J.) on 14.12.2004 issued Rule, which was made returnable on 28.12.2004. As the respondent original accused could not be served, again this Court (Coram: R.P. Dholakia, J.) on 13.4.2005 issued fresh Rule qua the respondent No. 1, which was made returnable on 2.5.2005. As the respondent – original accused still was not served, once against this Court (Coram: Bankim N. Mehta, J.) vide order dated 27.1.2006 ordered issuing fresh notice of Rule, which was made returnable on 21.2.2006. At the request of Shri Gohil, learned counsel for the applicant, one more time, this Court (Coram:S.R.Brahmbhatt, J.) issued fresh notice of Rule on 1.12.2006, which was made returnable on 12.1.2007.

3. Today, learned counsel Shri Gohil for the applicant has tendered communication received from the Gujarat Pollution Control Board dated

5.9.2006 indicating that as per their information, the accused had left India and as he is not available at his residence and the Company is closed, he could not serve. The same is ordered to be taken on record. Shri Gohil submitted that Court may pass appropriate order in light of the aforesaid facts and circumstances of the case.

4. This application for special leave could be disposed of on the ground that the complaint itself was not validly lodged as it appears to have been lodged by the Assistant Law Officer, Divisional Office of the Gujarat Water Pollution Control Board, Surat. Section 49 of the Act provides that no court shall take cognizance of any offence under this Act except on a complaint made by a Board or any officer authorized in this behalf by it or any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Board or officer authorized as aforesaid. In the instant case, the fact on record and the impugned judgment indicates that the Board appears to have authorized the Chairman by Resolution to lodge complaint as it is recorded by the trial Court. The resolution of the Board is at Ex. 52 and Chairman, in turn, has authorized the Assistant Law Officer, the complainant to file the complaint vide order at Ex.54. This sub-delegation was not proper and

therefore, the complaint was not validly lodged, which is an essential factor weighing against the granting any special leave for maintaining appeal challenging the order of acquittal. This Court in case of ***M/s. NICOSULF INDUSTRIES & EXPORTS PVT. LTD & ANR VS. STATE OF GUJARAT & ANR,*** reported in 2002(2) GLR op.1580 that in such a situation, the complaint filed by the Assistant Law Officer cannot be said to be a complaint validly filed and therefore, the entire case of the prosecution should fail only on this count. From the record, it is not pointed out as to whether this Assistant Law Officer was ever authorized by the Board by its general resolution or specific order to lodge the complaint against the present respondent. In view of this, no useful purpose is likely to be served, even if the leave is granted and appeal is admitted. The basic infirmity in respect of the very validity of the complaint cannot be cured in the proceedings under Section 378 of the Code.

5. In view of the aforesaid facts and circumstances, this Court is of the view that the order passed by the trial Court being just and proper, does not call for any interference under Section 378 of the Code. Leave, therefore, is refused. The application fails. Rule is discharged. As the leave is refused, the appeal would automatically stands dismissed.

(S.R.BRAHMBHATT, J.)

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